



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

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April 1, 1977

Honorable Chris V. Semos
Chairman
Committee on Business and Industry
Texas House of Representatives
Austin, Texas 78769

Letter Advisory No. 134

Re: House Bill 835, which
would permit warrantless
inspections of automobile
salvage dealers' premises.

Dear Chairman Semos:

You have asked our opinion as to the constitutionality of House Bill 835, presently before the 65th Legislature. That bill proposes to amend article 6687-2, V.T.C.S., to permit any peace officer to inspect the inventory and premises of an automobile salvage dealer at any reasonable time. You have submitted for our consideration both the original bill and a proposed committee substitute therefor. Neither version requires that the inspecting officer possess probable cause or a search warrant, and both versions authorize the officer to seize any motor vehicle or part which has been stolen or on which an identification number has been altered or obliterated.

The United States Supreme Court has made clear that

administrative searches . . . are significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual, and that the reasons put forth . . . for upholding these warrantless searches are insufficient to justify so substantial a weakening of the Fourth Amendment's protections.

Camara v. Municipal Court of San Francisco, 387 U.S. 523, 534 (1967). The reasoning of Camara was applied with equal force

to business premises as to private residences in See v. City of Seattle, 387 U.S. 541 (1967), where the Court concluded:

Administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure.

Id. at 545. The vitality of Camara and See has, moreover, been reaffirmed in Air Pollution Variance Board v. Western Alfalfa Corp., 416 U.S. 861 (1974).

Nonetheless, both the Supreme Court and lower courts have upheld limited exceptions to the warrant requirement of Camara and See within certain regulated industries. In Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970), the Court recognized that

Congress has broad power to design such powers of inspection under the liquor laws as it deems necessary to meet the evils at hand.

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We deal here with the liquor industry long subject to close supervision and inspection.

Id. at 76, 77. The "regulated industry" exception to Camara and See was extended to allow warrantless inspections of federally licensed firearms dealers in United States v. Biswell, 406 U.S. 311 (1972). The Court there found the inspections posed "only limited threats to the dealer's justifiable expectations of privacy." Id. at 316. Noting that the firearms industry is a "pervasively regulated business," the Court reasoned that a dealer entered the industry "with the knowledge that his business records, firearms, and ammunition will be subject to effective inspection." Id.

The Colonnade - Biswell "regulated industry" exception has also been extended by the federal courts to such businesses as the food industry, United States v. Business Builders, Inc.,

354 F. Supp. 141 (N.D. Okla. 1973); United States v. Del Campo Baking Mfg. Co., 345 F. Supp. 1371 (D. Del. 1972), the prescription drug business, United States ex rel. Terraciano v. Montanye, 493 F.2d 682 (2nd Cir.), cert. denied, 419 U.S. 875 (1974), and the coal industry, Youghiogheny and Ohio Coal Co. v. Morton, 364 F. Supp. 45 (S.D. Ohio 1973) (three judge). The courts of this State have likewise upheld statutorily authorized administrative searches under our State's liquor laws. Brown v. State, 391 S.W.2d 425 (Tex. Crim. App. 1965). Decisions in more recent court challenges to the warrantless inspection provisions of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678, have indicated, however, that Colonnade and Biswell should not be read to permit a general exclusion of commercial premises from the warrant requirement of the Fourth Amendment. Usery v. Centrif-Air Machine Co., Inc., 4 OSHC 1961 (N.D. Ga. Jan. 10, 1977); Barlow's, Inc. v. Usery, 4 OSHC 1887 (D. Idaho Dec. 30, 1976) (three judge); Dunlop v. Hertzler Enterprises, Inc., 418 F. Supp. 627 (D.N.M. 1976) (three judge); Brennan v. Gibson's Products, Inc. of Plano, 407 F. Supp. 154 (E.D. Tex. 1976) (three judge).

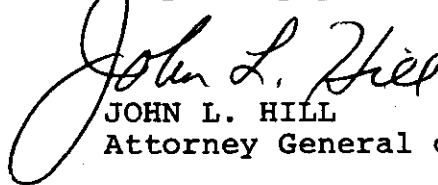
The proposed committee substitute for House Bill 835 seeks to impose certain record-keeping requirements on automobile salvage dealers, and requires that dealers permit inspection of those records by a peace officer at any reasonable time. Peace officers would be permitted to inspect the inventory on the dealer's premises in order to verify the records, and would be authorized to seize any motor vehicle or part which had been stolen or altered so as to remove or change certain identification numbers. While the question is close, we believe the weight of authority presently available indicates that the courts would find these provisions to be constitutional under the above-discussed authorities.

While we believe the courts would probably uphold the proposed committee substitute to House Bill 835 under the "regulated industry" rule, the constitutionality of the original bill is more doubtful. That bill would permit any peace officer to inspect the premises and inventory of an automobile salvage dealer at any reasonable time "for the purpose of locating stolen vehicles or parts." It might be questioned whether such a search could properly be regarded as administrative or regulatory in nature.

The committee substitute would also permit the peace officer to dispose of any property seized in accordance with the Code of Criminal Procedure. We believe the provisions of chapter 47 of the Code of Criminal Procedure to be beyond constitutional reproach.

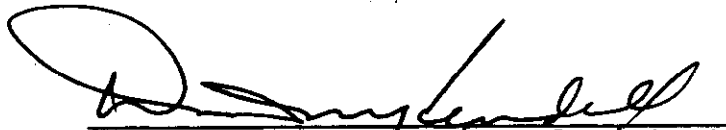
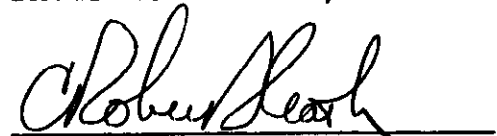
A final minor constitutional problem arises from the time at which an inspection of records and inventory might occur. The bill allows the inspection at "any reasonable time." The statutes upheld in Colonnade and Biswell permitted inspections during "business hours." While we believe the courts would probably construe the "reasonable time" language of the bill to be facially constitutional, the possibility of unconstitutional applications would be greatly ameliorated by use of a more precise term.

Very truly yours,



JOHN L. HILL
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APPROVED:


DAVID M. KENDALL, First Assistant
C. ROBERT HEATH, Chairman
Opinion Committee

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